

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

FOSTER POULTRY FARMS,

Employer,

and

MARIA ARACELI LOPEZ,

Petitioner,

and

UNITED FOOD AND COMMERCIAL
WORKERS 8-GOLDEN STATE,

Union.

Case No. 32-RD-230993

**EMPLOYER’S RESPONSE TO REGION’S RESPONSE TO EMPLOYER’S REQUEST
FOR SPECIAL PERMISSION TO APPEAL**

Foster Poultry Farms, the Employer in this matter, hereby responds to the Regional Director’s Response to Employer’s Request for Special Permission to Appeal the Acting Regional Director’s Order Directing Hearing and Notice of Hearing on Objections and “Errata,” Appeal, and Motion to Stay of January 10, 2019 (“Request”).

To begin, both the Regional Director’s statement that the only Objection at issue was Objection 5 and the implication that the issue raised by the Employer is now moot because that Objection was overruled, are incorrect. The Request to Appeal was not only directed to the reference to “Supervisor” in Objection 5 but to the reference to “unnamed supervisors” in the Errata dealing with that Objection. The Request also was directed to the use of the same term-- “unnamed supervisors” in the Errata with reference to three different objections-- 1, 2 and 3. Thus, the overruling of Objection 5 did not resolve the issue.

The Regional Director is correct when she states that the Employer was, at the time, defending against the claims in the various Objections involving the “unnamed supervisors”.¹ However, the Employer still was denied due process, at least because it was deprived of the ability to fully prepare for the hearing. Yes, the Employer has preserved the issue for further challenge, but the Region should never have created that situation.

The fact that sending the Objections based on the alleged conduct of the “unnamed supervisors” was inappropriate is shown by the fact that the Union withdrew Objections 2 and 3 at the Hearing. Further, the Regional Director relied too heavily on the Union’s Offer of Proof, which seemingly lacked key relevant information.

Rather, the Regional Director had a regulatory duty to look behind what the Union claimed in broad strokes, but then conceded it could not substantiate by dropping some of those Objections at the Hearing. Nevertheless, the Employer was forced to engage in a ‘wild goose chase’ to try and determine who those “unnamed supervisors” were, and to spend time preparing to defend against the vague, not fully-substantiated claims in these Objections. Finally, the Employer still had to defend against the claims in Objection 1 and the acts of “unnamed supervisors”. This should not have occurred.

As a matter of utilization of the time and resources of both the Board and the parties, if Regional Directors know the identity of the key players, they should notify the parties so that they can adequately prepare and defend against the claims. If the Regional Director does not know the identity, and should (e.g., to determine supervisory status), or if the identity is central to providing the responding party due process, it should not send such cases to hearing. This is precisely a case where the Employer was placed in an untenable position and denied due process.

¹ The fact that the hearing took place moots the requested stay.

The Request should be granted.

January 11, 2019

Respectfully submitted,

FOSTER POULTRY FARMS

By its attorneys,

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CERTIFICATE OF SERVICE

I do hereby certify that I caused a true and correct copy of the foregoing EMPLOYER'S RESPONSE TO REGION'S OPPOSITION to be served upon the following, via the NLRB's e-filing system and email on this 11th day of January, 2019:

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